

ORIGINAL



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MEMORANDUM

TO: Docket Control

FROM: Steven M. Olea
Director
Utilities Division

DATE: September 18, 2012

RE: IN THE MATTER OF THE APPLICATION OF ONVOY, INC. FOR APPROVAL OF A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE RESOLD LOCAL EXCHANGE, RESOLD LONG DISTANCE, FACILITIES-BASED LOCAL EXCHANGE AND LONG DISTANCE TELECOMMUNICATIONS SERVICES. (DOCKET NO. T-20842A-12-0116)

Attached is the Staff Report for the above referenced application. The Applicant is applying for approval to provide the following services:

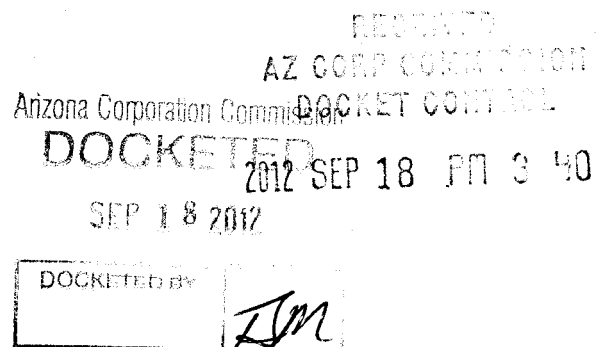
- Resold and Facilities-Based Local Exchange Services
- Resold and Facilities-Based IntraLATA and InterLATA Private Line Services
- Switched Access Service

Staff is recommending approval of the application, as amended, with conditions.

SMO:LLM:kdh

Originator: Lori Morrison

Attachment: Original and Thirteen Copies



SERVICE LIST FOR: ONVOY, INC.
DOCKET NO.: T-20842A-12-0116

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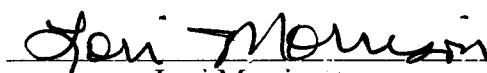
ONVOY, INC.
DOCKET NO. T-20842A-12-0116

**IN THE MATTER OF THE APPLICATION OF ONVOY, INC. FOR APPROVAL OF A
CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE RESOLD
LOCAL EXCHANGE, RESOLD LONG DISTANCE, FACILITIES-BASED LOCAL
EXCHANGE AND LONG DISTANCE TELECOMMUNICATIONS SERVICES.**

SEPTEMBER 18, 2012

STAFF ACKNOWLEDGMENT

The Staff Report for Onvoy, Inc., Docket No. T-20842A-12-0116, was the responsibility of the Staff member listed below. Lori Morrison was responsible for the review and analysis of the application for a Certificate of Convenience and Necessity to provide resold and facilities-based local exchange services, resold and facilities-based IntraLATA and InterLATA private line services and switched access services and petition for a determination that its proposed services should be classified as competitive.

A handwritten signature in cursive script, reading "Lori Morrison", written over a horizontal line.

Lori Morrison
Utilities Consultant

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1. INTRODUCTION

On March 28, 2012, Onvoy, Inc. ("Onvoy" or "Applicant") filed an application for a Certificate of Convenience and Necessity ("CC&N") to provide resold and facilities-based long distance services, resold and facilities-based local exchange services and resold and facilities-based intraLATA and interLATA private line services and switched access services on a statewide basis in the State of Arizona. The Applicant petitioned the Arizona Corporation Commission ("ACC" or "Commission") for a determination that its proposed services should be classified as competitive.

On July 9, 2012, Applicant filed an amended response for Section A-12 of the Application.

On August 14, 2012, Applicant filed an amended application removing the resold and facilities-based long distance services from the original application.

Staff's review of this application addresses the overall fitness of the Applicant to receive a CC&N. Staff's analysis also considers whether the Applicant's services should be classified as competitive, if the Applicant's initial rates are just and reasonable and if the Applicant's CC&N should be approved with conditions.

2. REQUESTED SERVICES

Onvoy's CC&N application requests statewide authority to provide resold and facilities-based local exchange services and resold and facilities-based intraLATA and interLATA private line services to large enterprise (business) customers and switched access services to other carriers such as Incumbent and Competitive Local Exchange Carriers, Interexchange Carriers and Wireless Carriers¹. Onvoy states in its application that services will not be provided to residential customers.²

3. BACKGROUND AND TECHNICAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES

Onvoy, Inc., formerly known as Minnesota Equal Access Network Services, Inc. ("MEANS"), was founded in 1988 and based out of St. Louis Park, Minnesota. In 1998, MEANS changed its name to Onvoy, Inc. Onvoy, Inc. became a direct subsidiary of Zayo Group Holdings, Inc. ("Holdings"), a Delaware corporation, in November 2007. Communications Infrastructure Investments, LLC is the ultimate parent of Holdings. In Arizona, Onvoy has several affiliates authorized to do all or some of the same services Onvoy is proposing to provide. Zayo Group, Inc. provides facilities-based local exchange and resold and facilities-based intraLATA and interLATA private line services pursuant to authority granted by Decision No. 72561 issued in Docket No. T-20783A-11-0024 on August 24, 2011. American

¹ Response to Staff Data Request STF 1.1(a).

² Sections (A-14) and (A-15) of the Application.

Fiber Systems, Inc. ("AFS") is authorized to provide facilities-based and resold local exchange, exchange access and interexchange telecommunications services pursuant to authority granted by the Commission in Decision No. 63936, dated August 6, 2001. 360networks (USA), inc. is authorized to provide facilities-based interexchange services and facilities-based local exchange services pursuant to authority granted by the Commission in Decision No. 62710, dated June 30, 2000 and Decision No. 69240, dated January 19, 2007, respectively. AboveNet, Inc. is authorized to provide resold and facilities-based non-switched dedicated and private line high capacity fiber optic telecommunications services pursuant to authority granted by the Commission in Decision No. 62628, dated June 9, 2000.

Onvoy states it is currently authorized to provide local and/or interexchange telecommunications service in California, Colorado, Indiana, Iowa (interexchange only), Michigan, Minnesota, Montana, Nebraska (interexchange only), Nevada, North Dakota, Ohio, Oregon, South Dakota (interexchange only), Texas (interexchange only), Utah, Washington and Wisconsin. Onvoy currently has an application pending in New York. In addition, Onvoy is in the process of seeking authorization in the following states so that it can provide services to the customers of 360networks, its affiliate, that are expected to be assigned to it by 360networks: Idaho, Nebraska (local exchange), New Mexico, Oregon, South Dakota (local exchange), Texas (local exchange), and Wyoming. The telecommunications experience of Onvoy's top four executives exceeds a combined total of 110 years.

Onvoy states it has not been denied requested certification in any jurisdiction, nor has any permit, license, or certificate been revoked by any authority except where Onvoy sought authorization to provide services that were not within the jurisdiction of the state agency. To clarify this statement, Onvoy stated in an email to Staff³ that in Iowa, Onvoy was granted a certificate to provide local exchange services on March 24, 2006, but never began providing such services. In 2010, the Iowa Utilities Board ("IUB") started a proceeding to cancel the certificates of entities that were not providing regulated services. While Onvoy was providing wholesale access service and other unregulated services in Iowa, it was not providing any regulated services at that time. The IUB therefore cancelled Onvoy's local exchange certificate and tariff without prejudice to Onvoy seeking such authority in the future.

Staff believes that Onvoy possesses the technical capabilities necessary to provide the services proposed in this CC&N application.

4. FINANCIAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES

The Applicant provided audited consolidated financial statements for the twelve months ending June 30, 2010 and twelve months ending June 30, 2011. The audited consolidated financial statements ending June 30, 2010, lists total assets of \$48,083,000; total equity of \$39,211,000; and a net income of \$908,000. The audited consolidated financial statements ending June 30, 2011, lists total assets of \$59,065,000; total equity of \$29,817,000; and a net income of \$2,535,000. The audited financial statements and accompanying notes were included

³ Email from BFerenchak to Staff, August 7, 2012.

in the application as Attachment D.

The Applicant lists conditions under which deposits and advance payments may be required for services on Page 18 of the Intrastate Tariff and Page 24 of the Access Tariff. Staff believes that advances, deposits, and/or prepayments received from the Applicant's customers should be protected by the procurement of either a performance bond or an Irrevocable Sight Draft Letter of Credit ("ISDLC"). The Applicant should be granted the discretion to procure either the performance bond or the ISDLC. Since the Applicant is requesting a CC&N for more than one kind of service, the amount of a performance bond or the ISDLC for multiple services is an aggregate of the minimum bond or the ISDLC amount for each type of telecommunications service requested by the Applicant. The Commission's current performance bond or ISDLC requirements are \$10,000 for resold long distance (for those resellers who collect deposits, advances or prepayments), \$25,000 for resold local exchange, \$100,000 for facilities-based long distance and \$100,000 for facilities-based local exchange services. Based on the services the Applicant is requesting authority to provide, the minimum recommended performance bond or ISDLC should be \$125,000. The performance bond or ISDLC coverage needs to increase in increments equal to 50 percent of the total minimum performance bond or ISDLC amount when the total amount of the deposits is within 10 percent of the total minimum performance bond or ISDLC amount. Further, measures should be taken to ensure that the Applicant shall not discontinue service to its customers without first complying with Arizona Administrative Code ("A.A.C.") R14-2-1107.

Staff recommends that the Applicant procure a performance bond or the ISDLC equal to \$125,000. The minimum performance bond or the ISDLC amount of \$125,000 should be increased if at any time it would be insufficient to cover advances, deposits, and/or prepayments collected from the Applicant's customers. The performance bond or the ISDLC amount should be increased in increments of \$62,500. This increase should occur when the total amount of the advances, deposits, and prepayments is within \$12,500 of the performance bond or the ISDLC amount. If the Applicant desires to discontinue service, it must file an application with the Commission pursuant to A.A.C. R14-2-1107. Additionally, the Applicant must notify each of its customers and the Commission 60 days prior to filing an application to discontinue service. Failure to meet this requirement should result in forfeiture of the Applicant's performance bond or the ISDLC.

Staff further recommends that proof of the above mentioned performance bond or an ISDLC be docketed within 90 days of the effective date of a Decision in this matter or 10 days before the first customer is served, whichever comes first. Staff also recommends that the Applicant notify Staff through a compliance filing when it begins serving customers. The original bond or ISDLC should be filed with the Commission's Business Office and 13 copies of the bond or ISDLC be filed with Docket Control, as a compliance item in this docket. The performance bond or ISDLC must remain in effect until further order of the Commission. The Commission may draw on the bond or ISDLC on behalf of, and for the sole benefit of the Applicant's customers, if the Commission finds, in its discretion, that the Applicant is in default of its obligations arising from its Certificate. The Commission may use the bond ISDLC funds, as appropriate, to protect the Applicant's customer and the public interest and take any and all

actions the Commission deems necessary, in its discretion, including, but not limited to returning prepayments or deposits collected from the Applicant's customers.

5. ESTABLISHING RATES AND CHARGES

The Applicant would initially be providing service in areas where an incumbent local exchange carrier ("ILEC"), along with various competitive local exchange carriers ("CLECs") and interexchange carriers are providing telephone service. Therefore, the Applicant would have to compete with those providers in order to obtain subscribers to its services. The Applicant would be a new entrant and would face competition from both an incumbent provider and other competitive providers in offering service to its potential customers. Therefore, the Applicant would generally not be able to exert market power. Thus, the competitive process should result in rates that are just and reasonable.

Both an actual rate and a maximum rate may be listed for each competitive service offered. The rate charged for a service may not be less than the Applicant's total service long-run incremental cost of providing the service pursuant to A.A.C. R14-2-1109.

The rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. In section (B-4) of its application the Applicant states that its projected net book value at the end of the first twelve months of operation is zero in Arizona jurisdictional assets. Additionally, Onvoy states in section (B-4), that projected revenues of \$158,000 are anticipated for the first twelve months of operation.

Staff has reviewed the rates proposed in Onvoy's tariff and believes they are comparable to the rates charged by competitive local carriers and local incumbent carriers operating in the State of Arizona. The rate to be ultimately charged by the Applicant will be heavily influenced by the market. Therefore, while Staff considered the fair value rate base information submitted by the Applicant, the fair value rate base information provided should not be given substantial weight in this analysis.

6. LOCAL EXCHANGE CARRIER SPECIFIC ISSUES

Issues related to the provision of that Local Exchange service are discussed below.

6.1 NUMBER PORTABILITY

The Commission has adopted rules to address number portability in a competitive telecommunications services market. Local exchange competition may not be vigorous if customers, especially business customers, must change their telephone numbers to take advantage of a competitive local exchange carrier's service offerings. Consistent with federal laws, federal rules and A.A.C. R14-2-1308(A), the Applicant shall make number portability available to facilitate the ability of a customer to switch between authorized local carriers within

a given wire center without changing their telephone number and without impairment to quality, functionality, reliability or convenience of use.

6.2 PROVISION OF BASIC TELEPHONE SERVICE AND UNIVERSAL SERVICE

The Commission has adopted rules to address universal telephone service in Arizona. A.A.C. R14-2-1204(A) indicates that all telecommunications service providers that interconnect into the public switched network shall provide funding for the Arizona Universal Service Fund ("AUSF"). The Applicant will make the necessary monthly payments required by A.A.C. R14-2-1204(B).

6.3 QUALITY OF SERVICE

Staff believes that the Applicant should be ordered to abide by the quality of service standards that were approved by the Commission for Qwest Corporation (f/k/a USWC now dba CenturyLink QC) in Docket No. T-01051B-93-0183 (Decision No. 59421). Because the penalties developed in that docket were initiated because CenturyLink's level of service was not satisfactory and the Applicant does not have a similar history of service quality problems, Staff does not recommend that those penalties apply to the Applicant. In the competitive market that the Applicant wishes to enter, the Applicant generally will have no market power and will be forced to provide a satisfactory level of service or risk losing its customers. Therefore, Staff believes that it is unnecessary to subject the Applicant to those penalties at this time.

6.4 ACCESS TO ALTERNATIVE LOCAL EXCHANGE SERVICE PROVIDERS

Staff expects that there will be new entrant providers of local exchange service who will install the plant necessary to provide telephone service to, for example, a residential subdivision or an industrial park much like existing local exchange companies do today. There may be areas where the Applicant installs the only local exchange service facilities. In the interest of providing competitive alternatives to the Applicant's local exchange service customers, Staff recommends that the Applicant be prohibited from barring access to alternative local exchange service providers who wish to serve such areas. This way, an alternative local exchange service provider may serve a customer if the customer so desires. Access to other providers should be provided pursuant to the provisions of the 1996 Telecommunications Act, the rules promulgated there under and Commission rules on interconnection and unbundling.

6.5 911 SERVICE

The Commission has adopted rules to address 911 and E911 services in a competitive telecommunications services market. The Applicant has certified that in accordance with A.A.C. R14-2-1201(6)(d) and Federal Communications Commission 47 CFR Sections 64.3001 and 64.3002, it will provide all customers with 911 and E911 service, where available, or will coordinate with ILECs and emergency service providers to provide 911 and E911 service.

6.6 CUSTOM LOCAL AREA SIGNALING SERVICES

Consistent with past Commission decisions, the Applicant may offer Caller ID provided that per call and line blocking, with the capability to toggle between blocking and unblocking the transmission of the telephone number, are provided as options to which customers could subscribe with no charge. Also, Last Call Return service that will not return calls to telephone numbers that have the privacy indicator activated, indicating that the number has been blocked, must be offered.

7. REVIEW OF COMPLAINT INFORMATION

The Applicant states that it has neither had an application for service denied, nor had its authority to provide service revoked in any state, except as previously discussed in Section 3. Staff did not find any instances of denied applications or revocation of authority to provide service. The Applicant indicated in the application that neither it nor any of its officers, directors or partners have been or are currently involved any formal or informal complaint proceedings pending before any state or federal regulatory commission, administrative agency or law enforcement agency. Staff has found no instances of any formal or informal complaint proceedings pending before any state or federal regulatory commission, administrative agency or law enforcement agency involving the Applicant or any of its officers, directors or managers.

On July 9, 2012, the Applicant filed an amended response to Section A-12 of the Application as follows:

Except as described below, neither Applicant nor any of its officers, directors, partners, or managers has been or are currently involved in any civil or criminal investigation, or had judgments entered in any civil matter, judgments levied by any administrative or regulatory agency, or been convicted of any criminal acts within the last ten (10) years.

While Applicant was not the target or subject of the investigation, out of an abundance of caution Applicant informs the Commission of the following investigation involving MCI nearly 10 years ago. Specifically, Applicant received a grand jury subpoena from the US Attorney for the Southern District of New York in July of 2003. The grand jury subpoena was prompted by claims made by a former employee of Onvoy and MCI. Onvoy cooperated in the investigation which ended with the US Attorney making no charges or allegations that Onvoy had engaged in any wrongdoing.

The US Attorney investigated two areas of inquiry. First, whether there had been any "code stripping" pursuant to which call records had been altered to hide or disguise the long distance nature of the call so as to avoid an obligation to pay access charges. Second, the US Attorney focused on MCI's long distance call termination practices, including the communications and contracts between Onvoy and MCI. The US Attorney also informed Onvoy, through counsel, that it

was looking at a number of different aspects of least cost routing to determine if any fraudulent activity occurred, including whether terminating access charges were illegally sought to be avoided engaged in any alteration, elimination manipulation or modification of call records, whether documents were falsified and whether call data had been altered or eliminated.

Following the receipt of the grand jury subpoena, Onvoy hired an outside law firm, Lindquist and Vennum, to conduct an internal investigation into the issues raised by the subpoena. Lindquist and Vennum conducted interviews of over two dozen current and former Onvoy employees and reviewed thousands of pages of documents and retained experts to assist in analyzing Onvoy's call records. Lindquist & Vennum found no evidence that long distance traffic sent to Onvoy from MCI was illegally or inappropriately routed; no evidence that Onvoy personnel had engaged in any alteration, elimination manipulation or modification of call records; and no evidence that Onvoy committed any fraud.

Onvoy cooperated in the investigation, which the US Attorney closed without charging or alleging that Onvoy had engaged in any wrongdoing.

The Applicant indicated, except as described above in the amendment, that neither it nor any of its officers, directors or partners have been in or are currently involved in any civil or criminal investigations, or had judgments levied by any administrative or regulatory agency, or been convicted of any criminal acts in the past ten (10) years. Staff found in a Web search a similar civil lawsuit⁴ filed by AT&T against MCI and Onvoy based on the same premise as described above. On February 23, 2004, AT&T announced it settled its dispute with Onvoy and the terms of the settlement were kept confidential. Separately, AT&T and MCI also settled their dispute and AT&T withdrew its lawsuit. Aside from this case, Staff found no further instances of Onvoy nor it nor any of its officers, directors or partners have been in or are currently involved in any civil or criminal investigations, or had judgments levied by any administrative or regulatory agency, or been convicted of any criminal acts in the past ten (10) years.

The Applicant has currently been granted authority in seventeen (17) other jurisdictions.⁵ Staff contacted all of the other jurisdictions where the Applicant is currently authorized to provide service to verify certification to provide service and to inquire about complaints. Of all the jurisdictions, thirteen (13) state commissions⁶ responded to Staff's inquiry. All thirteen states advised that the Applicant was indeed authorized to provide service in their jurisdiction and that no complaints had been received about the Applicant.

⁴ United States District Court for the Eastern District of Virginia, Alexandria Division, Civil Action No. 03-1114-A, filed September 2, 2003.

⁵ California, Colorado, Indiana, Iowa, Michigan, Minnesota, Montana, Nebraska, Nevada, North Dakota, Ohio, Oregon, South Dakota, Texas, Utah, Washington and Wisconsin

⁶ California, Colorado, Indiana, Iowa, Nebraska, Nevada, Ohio, Oregon, South Dakota, Texas, Utah, Washington and Wisconsin.

The Corporations Division has indicated that Onvoy, Inc. is in good standing. The Consumer Services Section reports no complaints have been filed in Arizona from January 1, 2009 to August 14, 2012. A search of the Federal Communications Commission's website found that there have been no formal or informal complaint proceedings involving the Applicant.

8. COMPETITIVE SERVICES ANALYSIS

The Applicant has petitioned the Commission for a determination that the services it is seeking to provide should be classified as competitive.

8.1 COMPETITIVE SERVICES ANALYSIS FOR LOCAL EXCHANGE SERVICES

8.1.1 A description of the general economic conditions that exist, which makes the relevant market for the service one that, is competitive.

The local exchange market that the Applicant seeks to enter is one in which a number of CLECs have been authorized to provide local exchange service. At locations where ILECs provide local exchange service, the Applicant will be entering the market as an alternative provider of local exchange service and, as such, the Applicant will have to compete with those companies in order to obtain customers. In areas where ILECs do not serve customers, the Applicant may have to convince developers to allow it to provide service to their developments.

8.1.2 The number of alternative providers of the service.

CenturyLink and various independent ILECs are the primary providers of local exchange service in the State. Several CLECs and local exchange resellers are also providing local exchange service.

8.1.3 The estimated market share held by each alternative provider of the service.

Since CenturyLink and the independent ILECs are the primary providers of local exchange service in the State, they have a large share of the market. Since the CLECs and local exchange resellers have only recently been authorized to offer service they have limited market share.

8.1.4 The names and addresses of any alternative providers of the service that are also affiliates of the Applicant, as defined in A.A.C. R14-2-801.

Currently, Onvoy has two affiliates in Arizona as indicated in section 3 of this report that provide local exchange services – Zayo Group, Inc. and 360networks (USA) inc.

8.1.5 The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms and conditions.

ILECs have the ability to offer the same services that the Applicant has requested in their respective service territories. Similarly many of the CLECs and local exchange resellers also offer substantially similar services.

8.1.6 Other indicators of market power, which may include growth and shifts in market share, ease of entry and exit, and any affiliation between and among alternative providers of the service(s).

The local exchange service market is:

- a. One in which ILECs own networks that reach nearly every residence and business in their service territories. Competition exists in most urban markets, but to a lesser degree in the rural areas of the state.
- b. One in which new entrants will be dependent upon ILECs:
 1. To terminate traffic to customers.
 2. To provide essential local exchange service elements until the entrant's own network has been built.
 3. For interconnection.
- c. One in which ILECs have had an existing relationship with their customers that the new entrants will have to overcome if they want to compete in the market and one in which new entrants do not have a long history with any customers.
- d. One in which most customers in more rural areas have few, if any choices since there is generally only one provider of local exchange service in each rural service territories.
- e. One in which the Applicant will not have the capability to adversely affect prices or restrict output to the detriment of telephone service subscribers.

9. PRIVATE LINE TELECOMMUNICATIONS SERVICE SPECIFIC ISSUES

Private line service is a direct circuit or channel specifically dedicated to the use of an end user organization for the purpose of directly connecting two or more sites in a multi-site enterprise. Private line service provides a means by which customers may transmit and receive messages and data among various customer locations over facilities operated and provided by the Applicant. The Applicant is therefore engaged in providing telecommunications service for hire to the public, which fits the definition of a common carrier and a public service corporation.

The Applicant will be providing service in areas where an ILEC, along with various

CLECs and interexchange carriers are providing telephone and private line services. Therefore, the Applicant would have to compete with those providers in order to obtain subscribers to its services. The Applicant would be a new entrant and would face competition from both an incumbent provider and other competitive providers in offering service to its potential customers. Therefore, the Applicant would generally not be able to exert market power. Private line services are highly competitive, thus, the competitive process should result in rates that are just and reasonable.

10. RECOMMENDATIONS

The following sections contain the Staff recommendations on the application for a CC&N and the Applicant's petition for a Commission determination that its proposed services should be classified as competitive.

10.1 RECOMMENDATIONS ON THE APPLICATION FOR A CC&N

Staff recommends that Applicant's application for a CC&N to provide intrastate telecommunications services, as listed in this Report, be granted. In addition, Staff further recommends:

1. That the Applicant comply with all Commission Rules, Orders and other requirements relevant to the provision of intrastate telecommunications services;
2. That the Applicant abide by the quality of service standards that were approved by the Commission for Qwest in Docket No. T-01051B-93-0183;
3. That the Applicant be prohibited from barring access to alternative local exchange service providers who wish to serve areas where the Applicant is the only provider of local exchange service facilities;
4. That the Applicant be required to notify the Commission immediately upon changes to the Applicant's name, address or telephone number;
5. That the Applicant cooperate with Commission investigations including, but not limited to customer complaints;
6. The rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. Onvoy's projected book value or fair value rate base at the end of its first 12 months of operation is projected to be zero. Additionally, Onvoy provided a revenue projection of \$158,000 for its first twelve months of operation. Staff has reviewed the rates to be charged by the Applicant and believes they are just and reasonable as they are comparable to other providers offering service in Arizona and comparable to the rates the Applicant charges in other jurisdictions. The rate to be ultimately charged by the Applicant will be heavily influenced by the market. Therefore, while Staff considered the fair value rate base

information submitted by the Applicant, the fair value information provided was not given substantial weight in this analysis;

7. That the Applicant offer Caller ID with the capability to toggle between blocking and unblocking the transmission of the telephone number at no charge;
8. That the Applicant offer Last Call Return service that will not return calls to telephone numbers that have the privacy indicator activated;
9. That the Commission authorize the Applicant to discount its rates and service charges to the marginal cost of providing the services;

Staff further recommends that the Applicant be ordered to comply with the following. If it does not do so, the Applicant's CC&N shall be null and void, after due process.

1. The Applicant shall docket a conforming tariff for each service within its CC&N within 365 days from the date of an Order in this matter or 30 days prior to providing service, whichever comes first:
2. The Applicant shall:
 - a. Procure a performance bond or an ISDLC equal to \$125,000. The minimum bond or draft amount of \$125,000 should be increased if at any time it would be insufficient to cover advances, deposits, and/or prepayments collected from the Applicant's customers. The bond or draft amount should be increased in increments of \$62,500. This increase should occur when the total amount of the advances, deposits, and prepayments is within \$12,500 of the bond amount or ISDLC amount; and
 - b. File the original performance bond or ISDLC with the Commission's Business Office and 13 copies of the performance bond or ISDLC with Docket Control, as a compliance item in this docket, within 90 days of the effective date of a decision in this matter or 10 days before the first customer is served, whichever comes earlier. The performance bond or ISDLC must remain in effect until further order of the Commission;
 - c. Notify the Commission through a compliance filing within 30 days of the commencement of service to end-user customers; and
3. The Applicant shall abide by the Commission adopted rules that address Universal Service in Arizona. A.A.C. R14-2-1204(A) indicates that all telecommunications service providers that interconnect into the public switched network shall provide funding for the Arizona Universal Fund. The Applicant will make the necessary monthly payments required by A.A.C. R14-2-1204 (B).

Furthermore, Staff recommends that approval of the Application be conditioned on the following:

1. That Onvoy's application be approved based upon its representation to the Commission that Onvoy will be providing local exchange service directly to end-users in Arizona. Should Onvoy not provide service directly to end-user customers, it shall notify the Commission within three years of the date of the decision for this application and file for cancellation its CC&N.

10.2 RECOMMENDATION ON THE APPLICANT'S PETITION TO HAVE ITS PROPOSED SERVICES CLASSIFIED AS COMPETITIVE

Staff believes that the Applicant's proposed services should be classified as competitive. There are alternatives to the Applicant's services. The Applicant will have to convince customers to purchase its services, and the Applicant has no ability to adversely affect the local exchange or interexchange service markets. Therefore, the Applicant currently has no market power in the local exchange or interexchange service markets where alternative providers of telecommunications services exist. Staff therefore recommends that the Applicant's proposed services be classified as competitive.